APPEAL NO. 022796
FILED NOVEMBER 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on October 3, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first through the fourth quarters because no doctor provided a narrative report that specifically explained how her compensable injury caused a total inability to work, and he found that her unemployment was the direct result of her impairment. The claimant appeals, asserting she is totally unable to work. The respondent (self-insured) seeks affirmance.

DECISION

We affirm the hearing officer's decision.

The 1989 Act requires an applicant for SIBs to make a good faith search for employment commensurate with the ability to work. Section 408.142(a)(4). It is worth pointing out that "commensurate with the ability to work" will not mean fulltime employment in every case, and if light duty or part time work is what a doctor restricts the injured worker to do, this is all that need be sought. Because of this flexible standard, the cases where there is a total inability to do any work will be few.

However, when a search for employment is not made, and the contention is made that the claimant has a total inability to work such that no search need be made, the injured employee must comply with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)). Rule 130.102(d) defines good faith as follows:

> Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
>
> (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work…[.]

In this case, the hearing officer found that there was no sufficient narrative presented, and that, additionally, other records showed an ability to work. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The decision of the hearing officer will be set aside only if

the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and we affirm the decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SA
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

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Susan M. Kelley
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Margaret L. Turner
Appeals Judge